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SOME ASPECTS OF THE ENGLISH BILL FOR  
THE ADMISSION OF KANSAS

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The process of converting a Territory into a State is ordinarily a matter of purely local concern, but the position that the struggle over the admission of Kansas occupies, as the culmination of the long controversy between the sections over the subject of slavery and as the immediate prelude to the civil war, gives to every step in that process an interest and an importance that it would not otherwise have. In order to understand the particular point to which attention is to be directed, it is necessary to recall briefly the main features of this struggle. The Free-State party, repudiating the Territorial government as illegal, framed at Topeka a constitution prohibiting slavery, and applied to Congress for the admission of Kansas as a State under it. A bill granting this application passed the lower House of Congress but was rejected in the Senate. Thereupon the proslavery party framed a counter constitution at Lecompton. The convention which framed this instrument did not submit it in its entirety to the voters of the Territory, but provided that the ballots should read "The Constitution with Slavery" and "The Constitution without Slavery." Under these circumstances the Free-State men refrained from voting, and "The Constitution with Slavery" was adopted by a vote which was fraudulently enlarged to give it an appearance of respectability.

On the 21 of February, 1858, President Buchanan transmitted this constitution to Congress with a special message, in which he urged the prompt admission of the State under it. March 23 the Senate passed a bill accepting the constitution and admitting the State.\* On the 1st of April, by a union of Republicans and anti-Lecompton Democrats, the House passed a substitute bill,<sup>1</sup> which had been proposed in the Senate by Mr. Crittenden and moved in the House by Mr. Montgomery, an anti-Lecompton Democrat from Pennsylvania. The Crittenden-Montgomery substitute provided that the Lecompton constitution should be resubmitted to the people of Kansas and ac-

\* The Senate vote was 23 to 25. Douglas, Broderick, Pugh, and Stuart, Democrats; and Bell and Crittenden, Americans, voted with the Republicans against the bill.

<sup>1</sup> The House vote was 129 to 112: Ninety-two Republicans, 22 anti-Lecompton or Douglas Democrats, and 6 Americans in the affirmative; and 104 Democrats and 8 Americans in the negative.

cepted only after ratification by them in a full and fair election. The Senate disagreed to the House amendment and the House insisted. April 14 the Senate asked for a committee of conference and Messrs. Green, of Missouri, Hunter, of Virginia, and Seward, of New York, were appointed the Senate members of the committee. On the following day, by the casting vote of the Speaker, upon the motion of Mr. William H. English, an anti-Lecompton Democrat from Indiana, the House acceded to the request of the Senate, and Messrs. English, of Indiana, Stephens, of Georgia, and Howard, of Michigan, were appointed the House members of the committee.

As the committee was constituted, with Green, Hunter, and Stephens committed to the acceptance of the Lecompton constitution; and Seward and Howard equally committed against it, the work of compromise naturally fell to Mr. English. A statement of what took place in the committee was subsequently given by Mr. English himself, as follows:

As the Senate had asked for the conference, the managers on behalf of that branch of Congress were informed by Mr. English that propositions for a compromise must first come from them. If they had none, the managers on the part of the House had none, and the conference would immediately terminate. The managers on the part of the Senate made several propositions, none of which were, however, acceptable to the members on behalf of the House. The Senate committee then asked the members from the House if they had any compromise to offer, to which Mr. English replied that he had none prepared, but that he had a plan in his mind based, however, upon the principle of the submission of the question of admission under the Lecompton constitution and an amended ordinance to a fair vote of the people of Kansas; and if the committee thought it worth while he would prepare it and submit it to them at their next meeting.<sup>5</sup>

This was done, and on the 23d of April the English compromise was reported from the committee, Seward and Howard dissenting. April 30 the report was carried in the House by a division of the votes of the anti-Lecompton Democrats<sup>6</sup> and was accepted by the Senate.<sup>7</sup> Promptly signed by the President, it became law on the 4th of May.

The so-called "English bill" submitted the question of admission under the Lecompton constitution to the people of Kansas in con-

<sup>5</sup> "A Biographical History of Eminent and Self-Made Men of the State of Indiana" (Cincinnati, 1880), Vol. II, sec. 7, p. 217. I am indebted to Mr. Charles Harter Rhodes, sometime fellow in American history in the University of Kansas, for this reference and for some other data used in this paper. Seward made a statement in the Senate, denying reported friction in the committee. (Globe, 25-1, p. 1880.)

<sup>6</sup> The vote in the House was 112 to 100. Of the 22 anti-Lecompton Democrats, 9 voted for the bill and 12 against it. Montgomery, by pairing with Warren, of Arkansas, virtually made 13. Wilson names the 12, Rise and Fall, Vol. II, p. 564. The affirmative were English and Faley, of Indiana, Jones, of Pennsylvania, and Cox, of Kentucky, Groesbeck, Hall, Lawrence, and Pendleton, of Ohio. Cox received the largest amount of abuse. Charges of bribery were investigated in the next Congress by the Covale committee. For the total, Rhodes (Vol. II, p. 209) erroneously substitutes the vote on the Crittenden-Montgomery amendment.

<sup>7</sup> The Senate vote was 31 to 22. Of the anti-Lecompton Democrats, only Pugh voted for the bill. Probably others would have done so had it been necessary for its passage.

junction with the acceptance by them of a specific land grant from the United States, viz, two sections in every township for the use of schools, two townships for a State university, ten sections for public buildings, salt springs not exceeding twelve in number with six sections adjoining each, and 5 per cent of the proceeds of the sales of public lands within the State. The ballots were to read "For proposition of Congress and admission" and "Against proposition of Congress and admission." It was further provided, that, should this proposition be rejected, the people of Kansas were authorized to frame a new constitution whenever but not before "the population of said Territory equals the ratio of representation required for a member of the House of Representatives," which at that time was 93,560.<sup>8</sup>

In discussions at the time, both in and out of Congress, and in the accounts given by historians ever since, the English bill has been denounced as an attempt to bribe the people of Kansas into an acceptance of the Lecompton constitution. This charge was most strenuously urged in the House by Mr. Bingham and in the Senate by Mr. Wilson.<sup>9</sup> In the country the bill was dubbed for partisan purposes "The English swindle," and this phrase still colors the present-day opinion of its character. Of the historical accounts the most important is the one given in Wilson's "Rise and Fall of the Slave Power,"<sup>10</sup> for the reason that it appears to have dominated the narratives of later writers. As Mr. Wilson was a member of the Senate at the time, and took part in the debate on the bill, it has been assumed that he not only knew the facts, but that he stated them fairly. Mr. Wilson wrote:

The proposition of the bill was, indeed, a gigantic bribe. Buxton and bullying had been tried, exhausted, and they had failed. Mercenary considerations were now proposed, combined with the menace that if the bribe was not accepted Kansas could not be admitted until, by the gradual accretion of numbers, its population should reach the general "ratio of representation" for members of the House.

Later he quotes from his own speech in opposition to the bill the statement that it was "a conglomeration of bribes, menaces, and meditated frauds. It goes to the people of Kansas with a close in one hand and a penalty in the other." And finally he closes the chapter devoted to the subject by saying:

<sup>8</sup> 11 U. S. Statutes at Large, 209. The possible postponement of admission until the population should equal the basis of representation was derived from the original Douglas enabling act of the first session of the Thirty-fourth Congress. The submission of the Lecompton constitution and land grant together was the logical result of the claim of Douglas that the ordinance was a part of the constitution and could not be changed without the consent of the people. (Globe, 35-1, p. 1258.)

<sup>9</sup> Globe, 35-1, pp. 1684 and 1874. The paragraph in Wilson's "Rise and Fall of the Slave Power," which purports to be an extract from Bingham's speech, consists of five passages taken from different parts of the speech, placed together without regard to sense or to the order in which they occur in the original.

<sup>10</sup> Vol. II, ch. 42. The extracts quoted are from pages 559, 561, and 565.

The people of Kansas had suffered too much, and were too deeply in earnest, to be seduced by the offer of the promised benefits of the bill—the liberal grants of land and its admission as a State—or driven by the menace of being kept out, to accept a constitution they had no agency in forming, and which they so thoroughly detested.

Von Holst says that "the bill to which English owes the unenviable immortality of his name was a legislative monstrosity,"<sup>2</sup> and devotes an entire chapter to its denunciation. Of more recent historians, Mr. Schouler says:

This degrading and dishonorable substitute, soon known as "Lecompton Junior," was exposed in its weak parts as soon as it was presented. It simply proposed to bring the harassed settlers into accepting a proslavery constitution, which they loathed, under the added penalty of being left out in the cold if they refused. \* \* \* the free-State voters of Kansas rallied, and, spurning both bribes and threats, they trampled under foot the largest of public lands and the Lecompton constitution together by a majority of ninety-five hundred.<sup>3</sup>

Mr. Rhodes describes the bill more temperately, but much to the same effect, as follows:

The measure offered Kansas a large grant of government lands and provided that the proposition should be voted on by the people of Kansas. \* \* \* It was, in effect, a bribe of land to induce the people of Kansas to accept the Lecompton constitution.<sup>4</sup>

All of these accounts give the impression that the English bill offered the people of Kansas an exceptionally large grant of land.<sup>5</sup> An examination of the policy of the Government in regard to the grant of lands to new States discloses the fact that this was not the case. In the course of the successive admission of public-land States, the amount of land to be granted to each had become an absolutely fixed quantity. The enabling act for Ohio, the first of these States, granted to the new State one section in each township for public schools, in accordance with the reservation in the land survey act of 1785, certain designated salt springs and 5 per cent of the proceeds of public lands thereafter sold within the State. Under the terms of the Ohio Company and Symmes purchases, Ohio had already become entitled to three townships for university purposes. Louisiana and Mississippi, admitted in 1811 and 1817, were given only the 5 per cent of the proceeds of public-land sales. Indiana was given one section in each township for public schools; two townships, one in addition to one already reserved, for university purposes; four sections for public buildings; saline lands amounting to thirty-six sections, and 5 per cent of the proceeds of public-land sales. Illinois was given the same grant as Indiana, except that all the salt springs

were granted in lieu of any grant for public buildings. With the admission of Missouri the grant of saline lands was permanently fixed at seventy-two sections, but in other respects the grant remained the same. Arkansas, Michigan, Florida, Iowa, and Wisconsin were given practically the same grants as Missouri, the only exceptions being some variation in the amount of land given for public buildings, and in the case of Florida four townships instead of two for university purposes, a grant which Wisconsin also eventually received in lieu of her grant of saline lands. The grant to California followed the precedent, established in 1848 in the act for the territorial organization of Oregon, of granting two sections in each township instead of one for public schools, but the grant of saline lands and the 5 per cent were withheld. With the enabling act for Minnesota Territory in 1857, the grant of lands to new States assumed its final form—two sections in each township for public schools, two townships for a university, saline lands amounting to seventy-two sections, and 5 per cent of the proceeds of public lands. The grant of land offered to Kansas in the English bill was identical with the grant offered to Minnesota the year before.<sup>6</sup>

\*The grants of land to the several States are shown in the following table:

State.	Schools, sections in each township.	University number of townships.	Public buildings, number of sections.	Salt springs, number of sections.	Land sales, per cent.	Prisons, number of sections.
Ohio.....	1	3	(c)	.....	5	5
Louisiana.....	.....	.....	4	36	5	5
Indiana.....	.....	.....	.....	.....	5	5
Mississippi.....	.....	.....	.....	All	5	5
Illinois.....	.....	.....	4,620	36	.....	.....
Alabama.....	.....	.....	4	72	.....	.....
Missouri.....	.....	.....	15	72	.....	.....
Arkansas.....	.....	.....	5	72	.....	.....
Michigan.....	.....	.....	8	72	.....	.....
Florida.....	.....	.....	3	72	.....	.....
Iowa.....	.....	.....	.....	.....	.....	.....
Wisconsin.....	.....	.....	10	.....	.....	.....
California.....	.....	.....	.....	.....	.....	.....
Minnesota.....	.....	.....	10	72	.....	.....
Oregon.....	.....	.....	10	72	.....	.....
Kansas.....	.....	.....	.....	.....	.....	20
Nevada.....	.....	.....	10	72	.....	.....
Nebraska.....	.....	.....	20	72	.....	20
Colorado.....	.....	.....	.....	.....	.....	.....
Dakotas, Montana, and Washington.....	.....	.....	50	.....	.....	(c)
Idaho.....	.....	.....	50	.....	.....	(c)
Wyoming.....	.....	.....	50	.....	.....	(c)
Utah.....	.....	.....	100	.....	.....	(c)
Oklahoma.....	.....	(f)	(g)	.....	.....	.....

\* Particular springs designated in the act.

<sup>2</sup> Two-fifths disclosed by Congress, in the case of Ohio for roads to the State, and in case of Indiana and Illinois for roads through the States.

<sup>3</sup> *Ibid.*

<sup>4</sup> Wisconsin, by special act of December 15, 1854, received two additional townships for university purposes in lieu of her grant of salt springs.

<sup>5</sup> Large additional grants of public lands to nearly all public institutions, in lieu of grants to other States under the distribution act of 1841 and the swamp-lands act of 1850.

<sup>6</sup> And an additional grant of 150,000 acres for a university and 200,000 acres for an agricultural college.

<sup>7</sup> One section in each township, proceeds to be divided equally between State university, State normal school, and agricultural college.

<sup>8</sup> One section in each township.

<sup>1</sup> Constitutional History of the United States, Vol. VI, p. 234.

<sup>2</sup> History of the United States, Vol. V, p. 399.

<sup>3</sup> History of the United States since 1850, Vol. II, p. 299.

<sup>4</sup> Reference to similar statements in popular books could be multiplied indefinitely. Cf. Stannwood's History of the Presidency, p. 297; Elson's United States, p. 585; Merriam's Negro and the Nation, p. 151, and Adams and Trent's School History, p. 531.

This fact was well known in Congress during the debate on the bill. The Senate bill for the admission of Kansas under the Leocompton constitution provided that nothing therein contained should deprive the people of Kansas of the same grants as those contained in the enabling act for Minnesota Territory.<sup>8</sup> The Crittenden-Montgomery substitute copied the land grant from the Minnesota act, as Mr. Crittenden took pains to explain when he moved the amendment in the Senate.<sup>9</sup> In speaking in opposition to the English bill in the debate in the House, Mr. Howard admitted that the grant was the same as that proposed to Minnesota. At this point Mr. English interrupted with the question:

I should be glad to ask the gentleman whether he is not advised of the fact that the amount of land proposed to be granted in the bill of the committee of conference is precisely the same as that proposed in the Crittenden amendment for which the gentleman voted.

To which Mr. Howard replied:

So far as the grant of land is concerned this bill and the Crittenden-Montgomery bill are identical, but the grant in the latter case is offered to Kansas under any constitution she may choose to adopt. The grant there was general, and therefore it was fair, but this grant hinges upon the adoption of this particular constitution, and is therefore unfair. It may be considered as a bribe.<sup>10</sup>

Not only was the grant in the English bill the same as that offered to Minnesota, it was the same as that offered to Kansas in the Toombs enabling bill,<sup>11</sup> passed by the Senate in 1856, the same as that contained in the Grow bill<sup>12</sup> for the admission of Kansas under the Topeka constitution, passed by the House at the same time, the same as the grant made to Oregon in 1859,<sup>13</sup> and the same as the grant under which Kansas herself was finally admitted to the Union in 1861.<sup>14</sup> Since that time the grants to new States, though of the same general form, have, except in the case of Nevada, been considerably enlarged. It is therefore clear that the grant of land proposed by the English bill was not in the slightest degree exceptional.

In order to explain the position of the land "proposition" in the English bill, it is necessary to review the Leocompton controversy from another point of view. Attached to the Leocompton constitution was an ordinance which requested an unusual grant of public lands—four sections in each township instead of two for public schools, all of the salt springs and mines in the State, the usual 5

<sup>8</sup> Senate Journal, 35-1, p. 201. Globe, 35-1, pp. 862, 1283, and 1436.

<sup>9</sup> Globe, 35-1, p. 1299.

<sup>10</sup> Globe, 35-1, p. 1287.

<sup>11</sup> The text of the Toombs bill, as introduced in the Senate is neither in the Senate Journal nor in the Globe, but the original bill as moved in the House by Stephens, is printed in the Globe, 34-1, p. 1514.

<sup>12</sup> Globe, 34-1, p. 1408.

<sup>13</sup> 11 U. S. Statutes at Large, 284.

<sup>14</sup> 12 U. S. Statutes at Large, 126.

per cent and university grant, and, in addition, alternate sections for 12 miles on each side of two railroads, one to run north and south and the other east and west through the limits of the State.<sup>15</sup> The request for grants for railroads was evidently inspired by similar grants that had recently been made in other States. The Illinois Central act of 1850 had given to Illinois alternate sections for six sections on each side of a railroad to be built through the entire length of the State. Before 1857 similar grants had been made for a large number of railroads in Mississippi, Alabama, Missouri, Arkansas, Iowa, Florida, Michigan, Wisconsin, and Louisiana.<sup>16</sup> It therefore appeared to the framers of the Leocompton constitution that Kansas ought to receive equivalent grants and that they might as well be obtained at the time of her admission to the Union.

The Leocompton question therefore presented two points—the major one of the acceptance of the constitution and the minor one of the acceptance of the ordinance. Upon the major point the Houses disagreed, the Senate accepting the Leocompton constitution and the House refusing to do so unless it should be resubmitted and ratified by the people of Kansas. The Senate bill, accepting the Leocompton constitution, provided that nothing therein contained should be construed as an assent by Congress to the propositions contained in the ordinance of the said constitution nor to deprive the people of Kansas of the same grants as those contained in the enabling act for Minnesota Territory; and the Crittenden-Montgomery substitute, passed by the House, gave to Kansas, as already stated, the identical grants that had been made to Minnesota the year before. The conference committee, therefore, in arranging a compromise, sought to emphasize the minor point upon which the Houses agreed and to minimize as much as possible the real issue upon which they divided. The only possible compromise between those who opposed and those who insisted upon a resubmission of the constitution was some sort of indirect resubmission. The English bill, therefore, put the land grant in the foreground and the constitution in the background. This arrangement enabled those who had opposed resubmission of the constitution to cover their retreat by claiming that it was the land grant and not the constitution that was submitted while it enabled those who had insisted

<sup>15</sup> *Poor's Charters and Constitutions*, Vol. I, p. 313. The General Land Office estimated that this would amount to 25,502,199 acres. (Globe, 35-1, p. 1706.) The English bill reduced the amount by about 20,000,000 acres.

<sup>16</sup> See "Statement of Land Grants made by Congress to Aid in the Construction of Railroads, etc.," compiled by the General Land Office, 1888, also Donaldson's "Public Domain," p. 295. The latter compilation must be used with care as it is probably the source of more misstatements in American history than any other single publication. For the land grant movement, see Sanborn's "Congressional Grants of Land in Aid of Railroads," in "Bulletins of the University of Wisconsin, Economics, Political Science and History Series," Vol. II.

<sup>17</sup> Both bills are printed in the Globe, 35-1, p. 1436.

upon resubmission to show that they had, after all, gained their point. The object was not so much to secure the acceptance of the constitution in Kansas, which no one seems to have expected, as to throw the bill into such ambiguous form that it would receive the assent of both Houses and restore peace, temporarily at least, to a distracted country.

It is not contended that the land "proposition" may not be construed as a bribe. In the debate in the Senate Mr. Douglas stated the case exactly.<sup>4</sup> The bill offered a specific grant of land in case the Lecompton constitution was accepted, but was silent as to the grant that would be made under another constitution. Friends of the bill ridiculed the idea that a provision which reduced the grant of land demanded by the Lecompton ordinance from 23,500,000 acres to 3,500,000 acres and offered only the normal cession to new States could be construed as a bribe. Even opponents of the bill conceded that Kansas would probably get the normal grant whenever admitted, but the omission to promise it raised a doubt upon this point, and by opposing a certainty to an uncertainty did offer the shadow of an inducement for accepting the Lecompton constitution.

More important was the inducement contained in the provision of the bill postponing the admission of Kansas, in case the Lecompton constitution was rejected, until the population of the Territory equaled the basis of representation, since it offered an immediate admission for an indefinite postponement. This, however, is not the provision designated as a "bribe" in the accepted accounts of the bill since in them it is described as a "threat" or a "penalty" additional to the "bribe." It was really the more vulnerable provision of the bill since it involved the inconsistent proposition that the population was large enough for admission under one constitution but not under another; or as Collamer expressed it "There were people enough to hold slaves, but not enough to enjoy freedom."<sup>5</sup> The position of the Administration party was that they would waive the question of population provided the Kansas agitation could be terminated, but would not do so if the agitation were to be continued. Despite the inconsistency involved in the provision, Kansas could not fairly complain of the postponement of her admission. No community can equitably claim two representatives in the upper House of Congress until its population entitles it to at least one representative in the lower House. In 1872 Congress passed a general act making this requirement for all States that should thereafter be admitted, and in recent practice admission has been delayed until long after this point has been reached. For four years the country had been stirred from the depths by the Kansas issue, and the Admin-

<sup>4</sup> *Globe*, 35-1, p. 1869. <sup>5</sup> *Globe*, 35-1, p. 1819. <sup>6</sup> 17 U. S. Statutes at Large, 29.

istration could scarcely be blamed for exercising its right to enforce a respite from further agitation.

When the English bill was discussed in Kansas, the speeches in Congress and the editorials in Eastern newspapers, making the charge of bribery, were reprinted in the local press, and the form of the land proposition was resented but no one claimed that its rejection would make any difference with the amount of public land that would eventually be received. A few of the leaders<sup>6</sup> and of the newspapers believed that it was advisable to secure immediate admission by temporarily accepting the Lecompton constitution and then calling a convention for its revision, but the section in the schedule of the constitution which provided for amendment only after 1864 raised a doubt as to whether this could be done. Nearly the whole of the free-State press and the mass of the free-State voters felt that they would stultify themselves by accepting even temporarily a constitution which they had so bitterly opposed. Accordingly, when the question was submitted on the 2d of August, 1858, the constitution was rejected by a vote of 11,300 to 1,788. This vote marks the close of the Kansas struggle in Congress, in the country at large, and in the Territory of Kansas, and this end was accomplished by the resubmission of the Lecompton constitution provided for in the English bill.

It is not intended to defend all the provisions of the English bill, but merely to show that the bill both in content and purpose was quite different from the common conception of it. The issue was between no resubmission and resubmission of the Lecompton constitution. The two inducements for accepting the constitution—the land grant and immediate admission—were the price paid for resubmission. They were not offered in the expectation that they would affect the result, but in order, by an appearance of compromise, to bridge the crisis in Congress. The bill was the trick of a shrewd politician, very similar to the subterfuge by which Clay secured the acceptance of the constitution of Missouri. It rests upon the same basis as all the slavery compromises in our history from the formation of the Constitution to the civil war. It was not the best solution of the difficulty, but the only one attainable at the time.

The restatement of this single point in the Kansas controversy suggests the necessity of a new examination of the whole subject. Mr. Rhodes has pointed out the essential fairness of the Toombs enabling bill adopted by the Senate during the Thirty-fourth Congress. If, in addition, it be admitted that the English bill, passed

<sup>6</sup> Robert J. Walker and Frederick P. Stanton, both staunch friends of the free-State party, advised acceptance of the Lecompton constitution. George W. Smith, governor-elect under the proposed State government, naturally took the same ground.

by the Thirty-fifth Congress, was a fair adjustment of the existing situation, then it follows that the Democrats, conscious of the injury that the Kansas issue was working to their interests, were willing to adopt any reasonable measure for its settlement. The Republicans, on the other hand, must either have been blinded by prejudice to the fairness of the proposals made by their opponents or else have intended for the sake of partisan advantage, as was charged at the time, to keep the Kansas issue alive as long as possible. Now that the heat of controversy has passed, a study of the debates will convince the candid reader that the irreconcilables, the violent speeches, and the responsibility for the final breach were by no means all on the side of the South.

